PUBLIC PROSECUTOR

v.

YAP SIN PENG

HIGH COURT MALAYA, KUALA LUMPUR
NH CHAN J
[FT CRIMINAL APPEAL NO. 147 OF 1985]
27 NOVEMBER 1985

CRIMINAL LAW AND PROCEDURE: *Bookmaking - Section 6(3)(a) of Betting Ordinance 1953 - Plea of guilty - RM2,000 fine - Appeal by Public Prosecutor - Inadequacy of sentence - Judicial notice - Common knowledge - Notorious facts - Sentencing policy.*

On 15 April 1985, the respondent was sentenced to a fine of RM2,000 at the Magistrate's Court after he pleaded guilty to the offence of acting as a bookmaker under s. 6(3)(a) of the Betting Ordinance 1953. The Public Prosecutor is in this Court appealing against the inadequacy of the sentence.

Held:

[1] Bookmaking is a serious crime and because such offences are rife in this country the Courts inevitably must take a grave view and impose a deterrent sentence on those who are minded to commit so evil and profitable a crime.

[2] The Courts are determined to do all they can to keep the underworld from infiltrating into legitimate sport in this country and to punish severely anyone who indulges in organised crimes.

[3] Public interest demands that the unrealistic kind of sentence which was imposed in this case should not be upheld. The appeal is allowed, the sentence is enhanced by adding to it a prison sentence of 18 months, and the fine is increased to RM20,000 in default 6 months' imprisonment.

[Appeal allowed.]

Cases referred to:
Cheong Ah Cheow v. PP [1985] 2 MLJ 257
R. v. Davies [1978] 67 Cr App R. 207

Legislation referred to:
Betting Ordinance 1953, s. 6(3)(a)
Prevention of Corruption Act 1961, s. 4(a)

For the public prosecutor - Tan Hock Chuan (DPP)
For the respondent - in person

[**Editor's Note:** The appeal from the above judgment is scheduled for hearing on 3 February 1986.]

JUDGMENT

NH Chan J:

On 15 April 1985, at the Magistrate's Court (Cik Salmah Kasim) at Jalan Duta, Kuala Lumpur, the respondent Yap Sin Peng, after pleading guilty to the offence of acting as a bookmaker under s. 6(3)(a) of the Betting Ordinance 1953, was sentenced to a fine of RM2,000. The Public Prosecutor has appealed against the inadequacy of the sentence.

The police had on 10 November 1984 raided a shop at 20 Jalan Lingkungan Berunai which is off Jalan Pudu. They found writing material and records which related to bets placed on horse racing. The respondent Yap who was found in possession of the documents was arrested. According to the expert Inspector Jalil Darus the number of bets accepted came to 5202 tickets. "Taking the normal rate of RM4 a ticket, the total [value] of bets was RM20,808." - said the Inspector. In his opinion any person found in possession of these records is a bookmaker as they are a record of bets placed on horse races.

The gross turnover on bets placed at the totalisator at the turf clubs for each race day is in the region of RM3 to RM4 million. But illicit bookmakers have a much higher gross turnover than that. We do not know and we do not stop to speculate. No accurate estimate can be made as to the enormous amount of the gross turnover on bets placed with illicit bookmakers. Suffice to say that it appears, in all probability, that the total figure is certainly not less than five times (and this is to put it conservatively) that of the gross turnover at the turf clubs on every race day and may very well be a much higher figure. Put conservatively, therefore, the turnover from illicit bookmaking is certainly not going to be less than RM15 to RM20 million on each race day. By anybody's standards, this is an enormous amount of money that went on bets placed with illicit bookmakers. At a dinner hosted by the Jockey Association of Malaysia last Friday (22 November 1985) its president Encik Razmy Ashari said that in Malaysia the racing industry contributes some RM400 million a year to the Government in the form of taxes and royalties. If the money that went to illicit bookmaking could be accounted for, the Government would have stood to lose in revenue something like RM2 billion a year. It could very well be a much higher figure.

At the apex of the illicit bookmaking pyramid are the syndicate heads; the kingpins as they are sometimes called. These people live behind a facade of respectability. Without exception, all have underworld connections. They are the barons of the underworld. Below them are their lieutenants; hoodlums who would carry out their dirty deeds, and their agents, servants and runners. Illicit bookmaking breeds violence and corruption. It is organised crime of which the motive is cold calculated greed. In *Cheong Ah Cheow v. PP* [1985] 2 MLJ 257, I have said:

> The seriousness of the situation caused by bookmakers in relation to sports in this country needs no emphasis in this Court; it is well known to everyone.

These people have given racing a bad name. In order to achieve their ends they have resorted to bribery. Jockeys and police officers are especially vulnerable and many have succumbed and fallen prey to corruption. Jockeys who have complied with their request to prevent a horse from running on its merit so that another horse could win are rewarded generously. Police officers, especially those in the anti vice and gambling section, are particularly susceptible to their evil influence. Gratification is offered through a process known as "washing". It is common knowledge that bookmakers do place huge bets at the totalisator as a form of reinsurance with the result that they always have with them a large amount of winning tickets. Police officers who have been paid or given these winning tickets could never be caught for corruption under s. 4(a) of the Prevention of Corruption Act 1961. "Dirty" money can be "washed" clean in this way: they can prove it too with the winning tickets or with a cheque from the turf club in payment of their winnings. And as for those jockeys and trainers who refuse to cooperate with them or who do not do as they are told, they would be subjected to harassment, intimidation and blackmail. Some have been set upon by hoodlums and maimed. Others have been shot at by assassins and they have barely escaped with their lives.

In March 1983, an attempt was made on the life of trainer Ivan Allan by an assassin outside his home in Singapore. He was hit by four bullets. It almost cost him his life.

In March last year, New Zealander Jockey Alwin Tweedie was shot at by four gunmen in Penang. They fired three shots, one of which hit his car.

In August last year, Australian jockey Malcolm Johnston was set upon by four men with iron pipes outside his hotel in Penang. His injuries were so severe his riding career could possibly be considered finished.

In March this year, jockey Velu was stabbed at the car park of his hotel in Ipoh. He was set upon by three men. They stabbed him in the neck and in the waist. His right leg is now partially paralysed.

And recently on 25 October a stipendiary steward of the Malaysian Racing Association was set upon by two men with iron rods at the Sri Pantai Motel in Tanjong Bungah, Penang. "TC" as he is popularly known is still in hospital. He may never be able to use his right arm again.

"Racing is regarded as the sport of kings" writes Robert M.B. Rushford in their National Echo of 26 August 1984, "but if the 'Kings' of the underworld can gain control by threats and violence it is going to be a sorry day for the punters and fans who love the sport just for the sake of the sport itself." In an interview for The Star newspaper of 28 March 1985, Velu, speaking from his hospital bed, "urged the Government to step in and break up the Mafia-type syndicates which he alleged controlled 70 per cent of the sport now." "Local jockeys, including stable boys, are often bullied by these syndicates and corruption is well known in racing circles," said Velu.

Of course, the respondent is not responsible for the acts of terrorism which I have just adverted to. Nor am I saying that he should be punished for them. But a bookmaker who operates near the apex of the pyramid of this illicit industry cannot thrive without support from his agents, employees and runners who operate on a smaller scale nearer the base of the pyramid. The respondent says that he was doing it for a "friend". This illicit industry can be crippled if the Courts of this country start to hand down stiff prison terms to those who have committed offences relating to bookmaking. Bookmaking is a serious crime and because such offences are rife in the country the Courts inevitably must take a grave view and impose a deterrent sentence on those who are minded to commit so evil and profitable a crime.

The Courts are determined to do all they can to keep the underworld from infiltrating into legitimate sport in this country and to punish severely anyone who indulges in organised crimes. "We have to remember" said Lawton LJ in *R. v. Davies* [1978] 67 Cr App R 207, "that it has been the sentencing policy of trial Courts for many years now to sentence to longish terms of imprisonment those who indulge in organised crimes. That policy has been approved by this Court."

It is in the interest of the public that the unrealistic kind of sentence which was imposed in this case should not be upheld. Accordingly, the appeal is allowed and I enhance the sentence by adding to it a prison term of 18 months. The fine is also increased from RM2,000 to RM20,000; in default six months' imprisonment.

Also found at [1986] 1 CLJ 222